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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

NO.

LORNE J. ACQUIN,

Petitioner

v.

STATE OF CONNECTICUT,

Respondent.

APPENDIX TO

PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE

STATE OF CONNECTICUT

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November 18, 1982

APPENDIX

TABLE OF CONTENTS

		Page
APPENDIX A	(Connecticut Supreme Court Decision).....	1a-54a
APPENDIX B	(Judgment of Superior [trial] Court).....	1b- 3b
APPENDIX C	(Motion to Reargue to Connecticut Supreme Court).....	1c-16c
APPENDIX D	(Order Denying Motion to Reargue).....	1d
APPENDIX E	(Defendant's Motion to Suppress Confession, Statements and Admission).....	1e- 4e
APPENDIX F	(Memorandum of Superior Court Denying Motion to Suppress).....	1f-23f
APPENDIX G	(Portions of Tape Recorded Interrogation of Defendant).	1g-12g

APPENDIX A

SUPREME COURT

October Term, 1981

STATE OF CONNECTICUT v. LORNE J. ACQUIN

SPEZIALE, C.J., PETERS, HEALEY, ARMENTANO and SHEA, Js.

Argued June 3, 1982-decision released July 27, 1982

Indictment charging the defendant with nine counts of murder, and information charging the defendant with arson in the first degree, brought to the Superior Court in the judicial district of Waterbury and tried to the jury before Pickett, J.; verdict and judgment of guilty and appeal by the defendant to this court. No error.

John R. Williams, special public defender, for the appellant (defendant).

Francis M. McDonald, state's attorney, with whom were Paul E. Murray, assistant state's attorney, Catherine J. Capuano, special assistant state's attorney, and, on the brief, Walter H. Scanlon, chief assistant state's attorney, for the appellee (state).

SPEZIALE, C.J. In the early morning hours of July 22, 1977, police and fire officials found nine bodies, eight of them children, inside the burned-out house of Fred Beaudoin, Sr. and Cheryl Beaudoin in Prospect. All of the victims had been beaten, some had been bound, and Cheryl Beaudoin had been stabbed. The defendant, Lorne Acquin, was indicted for the murders, and charged by information with first degree arson for the burning of the house. After a trial before a jury of twelve, he was found guilty on all counts and sentenced to an effective prison term of not less than 105 years nor more than life.

Before and during trial, the defendant made a number of motions challenging the admissibility of a confession which was obtained from him while he was in police custody on July 22. He also sought to suppress items of physical evidence which he claimed were the fruits of his illegally obtained confession. These motions were denied.[1]

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1 The court, however, did suppress evidence of the defendant's blood type obtained from a urine sample.

The defendant has appealed to this court, claiming error in (1) the admission of his confession and its fruits at trial, (2) the exclusion of a written hearsay statement, and (3) the composition of the jury array.

I

THE CONFESSION

The defendant made a confession to the state police in which he described in graphic detail his brutal and apparently motiveless murders of the nine victims. The confession was admitted at trial over defendant's objection. The defendant claims, inter alia, that the confession was obtained in violation of his fourth amendment right to be free from unreasonable seizures and his fifth amendment right not to be a witness against himself, as those rights are applied to the states through the due process clause of the fourteenth amendment. Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961); Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964).

A

THE FOURTH AMENDMENT CLAIM

A confession is by definition a self-incriminating statement, and any challenge to the admissibility of a confession naturally focuses on the fifth amendment guarantee that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself. . . ." U.S. Const., amend. V. The now familiar warnings required by Miranda v. Arizona, 384 U.S. 436, 467-73, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), are designed primarily to protect that right. Before the fifth amendment issue is reached, however, a preliminary inquiry involving the fourth amendment must be made.

Miranda held that "the prosecution may not use statements...stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." Id., 444. It is clear in the Miranda opinion itself, and also in cases decided by this court, that "[b]efore one suspected of the commission of a crime is entitled

to the warnings constitutionally required by Miranda ... two conditions must be satisfied: the suspect must be in the custody of law enforcement officials; Oregon v. Mathiason, 429 U.S. 492, 495, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977); Beckwith v. United States, 425 U.S. 341, 344-48, 96 S.Ct. 1612, 48 L.Ed.2d 1 (1976); and the suspect must be subjected to interrogation. Rhode Island v. Innis, 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980) ...." State v. Stankowski, Conn. (42 Conn. L.J., No. 46, pp. 5, 10), cert. denied, U.S. , 102 S.Ct. 596, 70 L.Ed.2d 588 (1981); see Miranda v. Arizona, supra, 444.

The first prong above is derived from the fourth amendment guarantee of freedom from unreasonable seizures. In this respect, we recently held that "[w]hether the confession and physical evidence are admissible turns on the answers to two subsidiary questions: (1) whether the defendant was 'seized' within the meaning of the fourth amendment to the United States constitution and article first, §7 of the Connecticut constitution

so as to invoke their protection, and, if so, (2) whether he was 'reasonably' seized, that is, whether there was probable cause to seize him. State v. Derrico, 181 Conn. 151, 157-58, 434 A.2d 356, cert. denied, 449 U.S. 1064, 101 S. Ct. 789, 66 L.Ed.2d 607 (1980); Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979)."[2] State v. Ostroski, 186 Conn. 287, 290-91, 440 A.2d 984 (1982).

1

Custody

The defendant was in the company of police officers for all but a few minutes from 9:30 a.m. on July 22 through the time his confession began at approximately 11:45 p.m. Ostroski, supra, requires that the court determine when the defendant was

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2 It should be noted that where there is an illegal seizure it is also necessary that the acquisition of the evidence sought to be suppressed be casually related to the illegal seizure. State v. Derrico, 181 Conn. 151, 157-58, 434 A.2d 356, cert. denied, 449 U.S. 1064, 101 S.Ct. 789, 66 L.Ed.2d 607 (1980).

legally in custody and whether, at that time, the police had probable cause to arrest him.

At about 9:30 a.m. on the morning of the Prospect fire, police went to Acquin's residence. Trooper James K. Blais told Acquin that the Beaudoin house had burned and some deaths had occurred there. Blais then "asked him if he would voluntarily help us by coming with us to help in the investigation." Acquin voluntarily agreed to go to the Bethany barracks, and then to the Meriden state police headquarters. He was read the Miranda rights for the first time at about 10:30 a.m., and officers began to question him about the Beaudoin family and about his own activities on the previous day.[3] The interview was tape recorded.

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3 Although the Miranda rights were read to the defendant he clearly understood them from his responses, the circumstances surrounding the reading of those rights are particularly unsettling. After Blais read from the card, the following conversation took place:

"Blais: Just want to put your initials on this please.

Acquin: What's all this,...?

Detective Joseph R. Zdanowicz relieved Blais at approximately 10:45 a.m. and also advised Acquin of the Miranda rights. Zdanowicz then continued the

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Blais: Its [sic] just acknowledging that I read those rights to you.
Acquin: ...court.
Blais: No, no, no, no. I'm not taking this into court. It doesn't say that, I didn't say that to you.
Acquin: (Inaudible).
Blais: No, ... See we have to tell this. We don't know what you're gonna tell us. See we have to tell, we have to advise you of your Constitutional Rights.
Acquin: (Inaudible).
Blais: Because of the importance..., no.
Acquin: (Inaudible).
Blais: Because we're interviewing you. We're just interviewing you. See I won't be talking to anybody ... advise you of your rights.
Acquin: (Inaudible).
Blais: You've never been advised of your rights before?
Acquin: (Inaudible). ... arrested.
Blais: You're not arrested."

It is significant that the conversational pattern was repeated later after Detective Joseph R. Zdanowicz read the Miranda-based preamble to the defendant's written statement:

"Zdanowicz: Now this is strictly on your own volition.
Acquin: (Inaudible).
Zdanowicz: Alright? Want to read this all over again?

questioning and prepared a written statement, which Acquin refused to sign. Shortly thereafter, at about 1:30 p.m., Acquin indicated that he did not want to

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Acquin: (Inaudible).
Zdanowicz: (Inaudible).
Acquin: (Inaudible).
Zdanowicz: They were read to you?
Acquin: (Inaudible).
Zdanowicz: And you don't want to sign it now do you?
Acquin: No because I don't ... what it says. I don't like what it says.
Zdanowicz: What does it say?
Acquin: It says, (inaudible).
Zdanowicz: No....well are you familiar with the system at all, the judicial system which you must be because you've been there so many times?
Acquin: (Inaudible).
Zdanowicz: You've been there when they've tried to arrange ....
Acquin: Yes, ...
Zdanowicz: Yeah well the courts also ...talk to people they always...have to read people their rights in a situation. That they could add information or be accused of or whatever the situation may be. So by law we are required to inform a subject of his rights and this is what we're doing. In other words for them, they say they sat here and chatted with you and they warned you of your rights and they gave you this blue card which has all your rights. If you wish to sign it you can but don't if you don't have to. And they do prepare you of your rights because they have to by law. (Inaudible). I'm

hear about the details of the crime, and asked to go home. Trooper George R. Hamila escorted Acquin to a police car, and they drove him home to Waterbury.

Upon learning that Acquin was being taken home, Lieutenant James Shay, the officer then in charge of the investigation, radioed an order to Hamila to bring Acquin to the Bethany barracks. Acquin told Hamila that he did not want to go back, and they continued toward Waterbury. When Shay repeated the order, Hamila turned the car around. Acquin protested and opened the door of the moving patrol car

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not giving any ... statement today, I want you to fully understand what the situation is.

Acquin: I understand."

The statement that a police interviewer "won't be talking to anybody" is in direct contradiction to the statement in Miranda that "anything said can and will be used against the individual in court." Miranda v. Arizona, 384 U.S. 436, 469, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1967). Because we hold below that the defendant was not in custody during the 9:30 a.m. interview, we need not decide what the legal effect of this elaboration on Miranda may be, but we cannot condone any attempt by officers to explain away the import of the fundamental constitutional rights contained in the Miranda warnings.

to get out. Hamila stopped the car, and Acquin began walking north on Route 69 toward home. Within minutes, at approximately 2 p.m., Shay arrived on the scene, accompanied by four other officers in two police cars. Shay placed a hand on Acquin's shoulder and spoke to him briefly. Surrounded by three cars and several officers, Acquin agreed to return to the Prospect command post with Shay.

At oral argument before this court, the state conceded that the defendant was seized for fourth amendment purposes when Shay placed a hand on him on Route 69. We agree.

This court has recently affirmed that a person has been "seized" so as to invoke the protection of the fourth amendment "'only when by means of physical force or a show of authority, his freedom of movement is restrained. . . . As long as the person to whom questions are put remains free to disregard the questions and walk away, there has been no intrusion upon that person's liberty or privacy as would under the Constitution require some particularized and objective justification. . . . We conclude that a person has

been "seized" within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.' United States v. Mendenhall, 446 U.S. 544, 553-54, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980)." State v. Ostroski, supra, 291-92; see also Miranda v. Arizona, supra, 444. In this case Acquin had just been questioned for three hours by the police, he had heard an order to return him to the police barracks, he was surrounded by police officers, and the senior officer had placed a hand on his shoulder. Although Shay did not declare "I seize you in the name of the State," his classic gesture could not have been more clear. No reasonable person could have believed that he or she was free to leave. The defendant was in custody at that time. State v. Ostroski, supra; United States v. Mendenhall, supra.

The defendant contends, however, that he was in custody at approximately 9:30 a.m. when he was first questioned. The record reveals the following undisputed facts: The defendant voluntarily

agreed to accompany the officers, first to Bethany, then to Meriden. The questions asked of him concerned the Beaudoin family, whom he knew well, and his contact with them the previous day. When he asked to go home, all questioning stopped, he was promptly taken to a police car, and the police started to drive him home. No claim is made that he was restrained or coerced in any way during the initial interview. Under the undisputed facts before us, no reasonable person could have considered that he was not free to leave at that time. The defendant was not in custody until he was seized by Shay at approximately 2 p.m.

2

Probable Cause

"'Probable cause exists when the facts and circumstances within the knowledge of the officer and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution to believe that a felony had been committed.' State v. Wilson, 153 Conn. 39, 42, 212 A.2d 75 [1965]"; State v. Wilson, 178 Conn. 427,

435-36, 423 A.2d 72 (1979); and that the person arrested committed it. State v. DeChamplain, 179 Conn. 522, 529, 427 A.2d 1338 (1980); see Brinegar v. United States, 338 U.S. 160, 175-76, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949); Carroll v. United States, 267 U.S. 132, 162, 45 S.Ct. 280, 69 L.Ed. 543 (1925). The quantum of evidence necessary to establish probable cause exceeds mere suspicion, but is substantially less than that required for conviction. Our cases have made clear that "[t]here is often a fine line between mere suspicion and probable cause, and '[t]hat line necessarily must be drawn by an act of judgment formed in light of the particular situation and with account taken of all the circumstances.' Brinegar v. United States, supra, 176." State v. Penland, 174 Conn. 153, 155-56, 384 A.2d 356, cert. denied, 436 U.S. 906, 98 S.Ct. 2237, 56 L.Ed.2d 404 (1978). Furthermore, when we test the quantum of probable cause, it is not the personal knowledge of the arresting officer but the collective knowledge of the law enforcement organization at the time of the arrest which must be considered. State v.

Runkles, 174 Conn. 405, 411, 389 A.2d 730, cert. denied, 439 U.S. 859, 99 S.Ct. 177, 58 L.Ed.2d 168 (1978); State v. Romano, 165 Conn. 239, 246, 332 A.2d 64 (1973); State v. Cobuzzi, 161 Conn. 371, 377, 288 A.2d 439 (1971), cert. denied, 404 U.S. 1017, 92 S.Ct. 677, 30 L.Ed.2d 664 (1972).

It is uncontested that the following facts were known to the police before Shay approached the defendant on Route 69 at about 2 p.m.: Nine bodies had been found, all badly beaten and some tied up, in the burned-out Beaudoin house. The fire was the result of arson. Acquin was the foster brother of Fred Beaudoin, Sr. and a frequent visitor to the Beaudoin home. Acquin had been : the house from at least 7:30 to 10 p.m. on the previous evening, July 21. Acquin had recent scratches on his face, which he explained were the result of a mugging the night before. In Zdanowicz's opinion, the injuries were not consistent with this explanation. Acquin had not reported the mugging to the police, and had not mentioned it at all in his oral statement to the police at approximately 9:30 a.m.

Resident state troopers in Bethany considered Acquin to be violent by nature on the basis of past experience. Acquin had once lived at the Beaudoin house and the house had caught on fire during that period.

In addition, police had interviewed Fred Beaudoin, Sr. and Alden Brooks, the only living people other than Acquin known to have been at the house on the night of July 21-22. Beaudoin had been at work when the fire broke out at approximately 3:45 a.m., and Brooks had apparently offered an acceptable account of his own whereabouts. When Acquin was told of the fire and deaths at 9:30 a.m. he showed neither surprise nor emotion. Rose Ann Paolino, who reported the fire at 3:45 a.m., had seen a dark colored car speeding away at that time. Acquin often drove a black Rambler, and had been driving it earlier in the evening.[4] Finally,

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4 The defendant stresses the fact that Paolino stated that the taillights she saw were round, and that the taillights of the Rambler were rectangular. It is not clear from the record, however, whether this discrepancy was known to the

Fred Beaudoin, Jr., one of the child victims, had told a playmate that Acquin was going to sleep overnight at the Beaudoin home on the night of the murders.

The defendant's contention that the police had information which implicated others as possible suspects need not detain us. The function of this court is not to second-guess the reasonable and logical conclusions of experienced police officers at the time of their determination of probable cause. Nor are we concerned with a retrospective look at the truth or falsity of the information which police had at the time of the arrest. Brinegar v. United States, supra, 176.[5]

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police at 2 p.m. Furthermore, a probable cause determination involves an evaluation of the totality of evidence available, and often must disregard minor discrepancies in that evidence.

5 The Supreme Court in Brinegar v. United States, 338 U.S. 160, 176, 69 S. Ct. 1302, 93 L.Ed. 1879 (1949), held: "Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable [persons], acting on facts leading sensibly to their conclusions of probability. The rule of pro-

We hold that the defendant was in custody on Route 69 at 2 p.m., and that the custody was legal because there was probable cause to arrest him at that time.

B

THE FIFTH AMENDMENT CLAIM: MIRANDA

The defendant's graphic and detailed confession to the murders was admitted at trial. The defendant asserted before the trial court, and claims before this court, that the confession was obtained in violation of his right not to be compelled to be a witness against himself under the fifth amendment to the constitution, as interpreted in Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378, reh. denied, 452 U.S. 973, 101 S.Ct. 3128, 69 L.Ed.2d 984 (1981), and

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bable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests [of individual rights versus community protection]. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice."

Miranda v. Arizona, supra.

After his encounter with Shay on Route 69 in Prospect at approximately 2 p.m., Acquin was brought to the Prospect command post. He was again read the Miranda rights and then questioned at length by Hamila regarding his activities of the preceding two days. At approximately 5:45 p.m. Acquin interrupted himself in midsentence and stated that he wanted a lawyer.[6]

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6 Hamila testified on cross-examination:

"Q. Okay. While you were at the Prospect Town Hall you told us there came a time, around five-forty-five p.m., when Mr. Acquin asked for a lawyer. Would you relate in detail the circumstances surrounding that request?

A. [Trooper Hamila] I was taking a statement from him at the Town Hall. And, as we were talking Lorne just stopped in the middle of a sentence or whatever I had written there and he told me, he says: I think I'm in trouble, I think I better get a lawyer. And, I says: do you want a lawyer. He says: I think I better get a lawyer, I think I got trouble.

Q. And, then what?

A. I stopped right there. I went to the door, I opened the door and called for Captain McDonnell. And, Captain McDonnell came to the room. I says: I think Lorne wants a lawyer."

Hamila reported Acquin's request for counsel to Captain Thomas McDonnell of the Connecticut state police, who had assumed overall command of the investigation. McDonnell told Hamila to get something to eat. McDonnell then went into the room with Acquin and talked with him for over half an hour in an attempt to discover who Acquin wanted to represent him. McDonnell suggested Acquin's previous attorney and the public defender. Acquin rejected both, as he did the suggestion that his brother be called to get him an attorney. After some time, Acquin indicated that "it wasn't really an attorney that he wanted, it was just somebody he could trust," and that he wanted Joel Albert, a psychiatrist working with prisoners in the New Haven jail. Acquin also indicated "that as soon as Albert got there that he would tell us the truth about what happened the night before."[7] McDonnell broke off the conversation at that point, and ordered Shay to find and

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7 Because the conversation between McDonnell and Acquin is central to our holding, McDonnell's testimony on direct examination is set out at length below:

to summon Albert. He then returned to the interrogation room, and he and Acquin decided to get something to eat.

"Q. All right. Now, it was in the vicinity of six o'clock when you talked to Trooper Hamila regarding this lawyer; is that right?

A. That's right.

Q. And, he left. What did you do?

A. I went in the room with Lorne Acquin and shut the door. And, it was just he and I in the room at that time.

Q. When you entered the room was there anybody else there besides Acquin?

A. No.

Q. What, if anything, did you say to Acquin?

A. I told him that: Trooper Hamila told me that you want an attorney.

Q. What did he say?

A. He said: yes, he did.

Q. And, then what did you say?

A. I asked him who he wanted. And, there were very long pauses before he would respond to my questions. And, then he said he didn't know; I asked him: did he have anyone in particular in mind. He said no. I asked him: how about the attorney that you had last time. And, he told me that he didn't trust that attorney and he didn't want him. I asked him -- told him that: was there anybody else, another attorney. He said no, there wasn't another attorney that he wanted or trusted. I asked -- Then I told him: if he couldn't pick an attorney that I would make calls and get a public defender or the state would provide an attorney for him. And, he replied to that that he

Hamila returned shortly thereafter, and McDonnell, Hamila and Acquin drove to a restaurant nearby, where they ate hamburgers in the police cruiser.

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didn't want the attorney that we -- that I would call. He said: it would be just like talking to another cop. He didn't want any attorney that we choose. I then asked him about his family. I told him: I was pretty sure that his brother was in the building someplace, although I hadn't seen his brother, could his brother get an attorney for him.

Q. What did he say?

A. He said no. He didn't want his brother to get involved. He didn't want his brother to even know he was in the building or he didn't want his brother to know that he was involved here in the building with us.

Q. Then what happened?

A. Then we continued to talk about how would we find him an attorney, how would we get an attorney for him. And, he said that he -- it wasn't really an attorney that he wanted, it was just somebody that he could trust. He wanted to sit and have somebody sitting with us that he trusted before he had any further conversation. And, I asked him who that, you know -- is there such a person, who can we get for you. And, he suggested a Dr. Albert, who I was not familiar with and didn't know who he was. And, I asked who he was and how he knew him. And, he told me that he knew him from the New Haven Jail and he thought he was employed at the New Haven jail.

Acquin was not handcuffed or physically restrained during this trip. At Acquin's request he was taken to Bethany rather than back to Prospect, where a crowd of reporters had gathered.

About that time I went out to Lieutenant Shay and I told Lieutenant Shay that he wanted a Dr. Albert and to get a hold of Dr. Albert and have him come to the command center where we were.

Q. Did you ask Acquin whether or not Dr. Albert was a lawyer?

A. Yes, I did. And, he said that he knew he was a -- I think he was referring to him by a slang expression. He was calling him either a shrink or a head doctor or something like that, but wasn't sure whether or not he was an attorney. And, I told him that, you know, that Dr. Albert couldn't play the part of an attorney if, in fact, he wasn't an attorney. And, Acquin just kept saying that he wasn't really concerned about that, what he wanted was somebody to sit in that he could trust and be with him.

Q. Did he say he trusted Dr. Albert?

A. He said he trusted a Dr. Albert very, very much. In fact, he said that, while this conversation was going on, that he had told me and Dr. Albert some things that we were the only two he had ever told, he hadn't even told some of his family members.

Q. And, how long did this conversation go on?

A. Well, from the time I went in the room until I came out and told Shay -- I would say from a half to three quarters of

In Bethany, Acquin was left alone in a room to wait for Albert. He curled up in an armchair and slept or rested for about two and one-half hours, when Albert finally arrived at approximately 11:40 p.m. on July 22. McDonnell woke Acquin up, and asked whether he still wanted to see Albert and to tell his story. Acquin said he did, and the two of them joined Albert in another room. McDonnell told Acquin that Albert was not an attorney and reminded him that any statement made could be used against him in court;[8] and at Albert's request, McDonnell then left

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an hour or so....

Q. After he said he wanted to see Dr. Albert, what happened?

A. Well, that is when I told Shay to make arrangements to find Dr. Albert. And, I did that as soon as Acquin said: that as soon as Dr. Albert got there that he would tell us the truth about what happened the night before."

8 McDonnell testified on direct examination:

"A. I first went down, told Lorne Acquin that Dr. Albert was here and did he still want to see him and that he still wanted to talk with us while Dr. Albert was present. And, he said: yes, he did. So, I went back to the room and got Dr. Albert. And, Dr. Albert came into the room. And, the three of us then sat in

the room. Albert determined that Acquin did want him there, and called McDonnell back in. Neither Acquin nor Albert mentioned an attorney.[9] On direct examina-

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the room.

Q. And, what happened then?

A. Again, I attempted to make it very clear to Lorne that Dr. Albert was not an attorney. I had already inquired of that fact, that Dr. Albert -- found out he was not an attorney and that he couldn't act in the capacity of an attorney. And, I told him that anything that he told Dr. Albert while I was seated there and listening and anything that I overheard, that I would be able to testify to against him and use any information obtained during that conversation against him in court."

9 Albert testified on direct examination at the suppression hearing about his encounter with Acquin in Meriden:

"Q. Could you describe Lorne Acquin when you first observed him this night, Doctor?

A. Mr. Acquin came in. He seemed to be waking up. He came over to me and greeted me and I greeted him. He seemed collected. He seemed to be glad to see me.

Q. What, if anything, did he say to you?

A. I believe we exchanged greetings. I think he said, 'Hi, Doc.' I said, "Hi, Lorne." Something of that nature.

Q. What, if anything, did he say?

A. What's that?

tion, McDonnell described the conversation which followed:

Q. Then what, if anything, did he say?

A. At one point or other I remember quite well he, in the presence of myself and Captain McDonnell, he said, 'Well, Doc, I really did it this time.' And I had no understanding of what that meant at that time.

Q. After this greeting and this comment, was there a period you were alone with Acquin?

A. Yes. I told the Captain that I wanted to see Mr. Acquin alone, and he left the room.

Q. He left the room?

A. Yes.

Q. And both of you were left in the room alone together?

A. That's correct.

Q. What was the conversation you had with him?

A. I asked Mr. Acquin whether he wanted me to be present, in fact, with him, and he said he did.

Q. Could you tell us, Doctor, if he said no, what would you have done?

A. I would have left.

Q. As he said yes --

A. I probably would have also asked him what was going on, things of that nature.

Q. But you would not have remained?

A. No, not at all.

Q. After this short conversation what happened?

A. Then I -- once I was assured Mr. Acquin did want me to be there as a witness, I called the Captain in.

"A. They [sic] then asked Lorne Acquin: do you want to tell us what happened last night. And, he said: no, I don't want to tell you.

Q. And, what did you say?

Q. What, if anything, did you say to the Captain?

A. I didn't say anything to the Captain.

Q. What happened next? Did anybody say anything?

A. At that point the Captain said something to the effect that 'Dr. Albert is here now and you said you wanted to say something else to us, or make a statement,' something of that nature, at which point Mr. Acquin went into a rather graphic confession of the killings.

Q. Do you recall how this began?

A. Spontaneously on Mr. Acquin's part.

Q. Do you recall the first thing he said in regards to --

A. As a matter of fact, I think that -- I'm quite sure but I'm not absolutely sure that Captain McDonnell reminded Mr. Acquin of his legal rights prior to Mr. Acquin making any -- you know, going into any statement or details of what had gone on that previous evening.

Q. Do you recall the words used by Captain McDonnell?

A. No, I can't recall that.

Q. Did he say he didn't have to say anything or words to that effect?

A. Yes.

Q. All right. Do you recall the first thing that Lorne Acquin said in regards

A. I said: well, I thought you said when Dr. Albert got here that you would tell us the truth about what happened last night. And, he said: well, what I mean is, it's--I don't want to tell you, I want you to ask me questions, I can't go through it all again. So, I asked him questions.

Q. Did you ask him questions?

A. Yes.

Q. What did you ask him first?

A. First question I asked him was: how did you really get those cuts. Previously he told us he got the cuts during an assault, he was assaulted by some people up in the Waterbury area. And, his

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to the killings?

A. I might just add that he also--I'm quite sure that he made it clear that it was possible if Mr. Acquin wanted to have counsel present.

Q. I see. This was before he gave the confession?

A. That's correct.

Q. What happened after he said that?

A. Then Mr. Acquin went into his statement.

Q. I see. Do you recall--this is an oral statement?

A. It was a spontaneous oral statement."

reply to my question was that he didn't get the cuts from those guys the way he told me.

Q. And--

A. And, then I asked him: did you kill all those people. And, he said: yes, he did. And, then without any further questions for quite some time, he went into a narrative about what happened the night before."

The defendant claims that the facts before us establish as a matter of law that his confession was obtained in violation of his constitutional rights. We disagree.

Any inquiry into the admissibility of a confession obtained while a defendant is in custody must of course begin with Miranda v. Arizona, supra. In that case, the United States Supreme Court held that the fifth and fourteenth amendments' prohibition against compelled self-incrimination requires that a suspect in police custody be informed specifically of his or her right to remain silent and to have an attorney present before being questioned. Miranda v. Arizona, supra, 444, 479. The

court further held that "[i]f the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease"; Id., 473-474; and "[i]f the individual states that he wants an attorney, the interrogation must cease until an attorney is present." Id., 474. Furthermore, "[i]f the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." Id., 475. The standard for waiver is that announced in Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938): "A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. . . .[which] must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." Accord, North Carolina v. Butler, 441 U.S. 369, 99 S.Ct. 1755, 60 L.

Ed.2d 286 (1979); State v. Wilson, Conn. (42 Conn.L.J., No. 37, p. 1)(1981).

The Supreme Court recently reconfirmed the principles stated above in Edwards v. Arizona, supra, where the court held: "[W]hen an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights. We further hold that an accused, such as Edwards, having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities unt i counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." Id., 484-85.

The defendant contends that Edwards v. Arizona, supra, establishes a per se rule that once an accused has asked for counsel, any further questioning of any kind by the police violates his fifth amendment rights.

We do not, however, construe the Edwards opinion so broadly. To do so would transform the Miranda safeguards "into wholly irrational obstacles to legitimate police investigative activity, and deprive suspects of an opportunity to make informed and intelligent assessments of their interests." Michigan v. Mosley, 423 U.S. 96, 102, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975). We believe that the Edwards opinion is a restatement of existing principles of constitutional law, and is not intended to overrule decided cases. Edwards does not prohibit communication between police and a suspect who has requested an attorney. Rather it prohibits the use of confessions obtained when police "initiate" renewed custodial interrogation after such a request. The Supreme Court has stated quite clearly that the Miranda safeguards are relevant only when an in-custody accused is subjected to interrogation. "'Interrogation'" means "any words or actions ... that the police should know are reasonably likely to elicit an incriminating response from the suspect." Rhode Island v. Innis, 446 U.S. 291, 301, 100 S.Ct. 1682, 64 L.Ed.2d

297 (1980). See State v. Falby, 187 Conn. 6, 15, 444 A.2d 213 (1982); State v. Graham, 186 Conn. 437, 443, 441 A.2d 857 (1982). The per se rule suggested by the defendant would negate the holding in Innis by forbidding any conversation initiated by police after a request for counsel whether or not "likely to elicit an incriminating response." But the majority in Edwards was careful to disavow any intention to overrule the interrogation requirement of Miranda and Rhode Island v. Innis, supra, stating: "The Fifth Amendment right identified in Miranda is the right to have counsel present at any custodial interrogation [absent which] ... there would have been no infringement of the right that Edwards invoked . . . ." Edwards v. Arizona, supra, 485-86.

The relevant inquiry when a defendant has clearly invoked his right to counsel is to ask, first, was there in fact interrogation and, second, did the police initiate it. Edwards v. Arizona, supra, 490 (Powell, J., concurring in the

result).[10]

It is unquestioned that Acquin was read the Miranda rights before any statement was taken, and it appears clear from the record that he understood those rights. It is also undisputed that he specifically requested an attorney at 5:45 p.m. ("I think I'm in trouble. I think I better get a lawyer."), and that he confessed several hours after that request. Edwards and Miranda require, therefore, that we examine two incidents which occurred after the defendant's request: (1) McDonnell's inquiries about whom the defendant wanted as an attorney; and (2) the events immediately following the arrival of Albert in Bethany, which immediately preceded the

10 Our conclusion that Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378, reh. denied, 452 U.S. 973, 101 S.Ct. 3128, 69 L.Ed.2d 984 (1981), does not announce new principles is supported by most courts which have ruled on the question. See United States v. Halliday, 658 F.2d 1103 (6th Cir. 1981); Richardson v. State, 625 S.W.2d 504, 507 (Ark. 1981); People v. Denby, 102 Ill. App. 3d 1141, 430 N.E.2d 507 (1981); Bryant v. State, 49 Md. App. 272, 431 A.2d 714 (1981); State v. Scott, 626 S.W.2d 25 (Tenn. Crim. App. 1981).

confession.

1

Inquiries about Counsel

When Acquin said, "I think I better get a lawyer," Hamila, who was questioning him, stopped immediately and reported the request to his superior, McDonnell. McDonnell proceeded to ask further questions of the defendant in an attempt to ascertain whom he wanted to represent him. McDonnell offered to call: Acquin's previous attorney, any other attorney, and the public defender. Acquin said he didn't want any of them. McDonnell then offered to find Acquin's brother, who he thought was "in the building someplace" and have him obtain an attorney. Again Acquin refused the offer, indicating that "he didn't want his brother to know that he was involved ...." On further inquiry about how to find a lawyer, Acquin indicated that "it wasn't really an attorney that he wanted, it was just somebody that he could trust," and asked that Albert be present before he made a statement. Acquin told McDonnell "that as soon as Dr. Albert got there that he would tell...the truth about what happened the night be-

fore." McDonnell then ordered a search for Albert.

The questions asked by McDonnell were not interrogation. They were not of the kind likely to elicit an incriminating response. Rather, they were limited to information which would allow McDonnell to comply with the defendant's request for counsel by ascertaining who should be called. Questions of this type, when limited to finding the attorney of the suspect's choice, are not forbidden by Miranda and its progeny. The right to counsel is of little use to an accused if police are not allowed to ascertain whom to summon. McDonnell suggested several different ways for the defendant to obtain legal advice, and even offered to call the defendant's brother. Such carefully limited questions cannot reasonably be considered interrogation, and would be proper whether or not the defendant's request for counsel was "equivocal." See Nash v. Estelle, 597 F.2d 513 (5th Cir. 1979) (en banc).[11]

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11 See discussion of this case, infra, 673.

2

The Confession

Albert arrived in Bethany at about 11:40 p.m., more than five hours after Acquin told McDonnell that he would "tell the truth about what happened last night" if Albert were present. The two met alone, very briefly, and then Albert called McDonnell back into the room. McDonnell was careful to explain that Albert was not an attorney, and that if Acquin said anything to Albert in McDonnell's presence, it could be used in court. McDonnell testified on direct examination to the ensuing conversation: "[I] then asked Lorne Acquin: do you want to tell us what happened last night. And, he said: no, I don't want to tell you. ... I said: well, I thought you said when Dr. Albert got here that you would tell us the truth about what happened last night. And, he said: well, what I mean is, it's--I don't want to tell you, I want you to ask me questions, I can't go through it all again. So, I asked him questions." A detailed confession followed.

Edwards v. Arizona, supra, holds that confessions obtained after a request

for counsel are inadmissible if they are the result of renewed custodial interrogation "initiated" by the police. In Edwards, the defendant was arrested for robbery, burglary and murder, advised of his rights, and then questioned about the crimes. After giving a statement presenting an alibi defense, Edwards sought to make a deal. He then stated: "'I want an attorney before making a deal.'" Police immediately ceased all questioning, and Edwards was locked up. The next morning, two detectives came to the jail and asked to see Edwards, who told the guard that he did not want to talk to anyone. The guard replied that "'he had'" to talk to them, and took him to an interrogation room where he was played a recording of an "alleged accomplice who had implicated him" in the crimes. Edwards then gave a second statement which incriminated him. Edwards v. Arizona, supra, 478-79. It was the second statement which was excluded by the Supreme Court decision in Edwards.

We have already indicated that we do not read Edwards to prescribe a per se rule that a confession which follows any

conversation initiated by police after a request for counsel must be suppressed. We agree with Justice Powell, concurring in Edwards v. Arizona, supra, 488-492, that "few cases will be as clear as [Edwards]. Communications between police and a suspect in custody are commonplace. It is useful to contrast the circumstances of this case with typical, and permissible, custodial communications between police and a suspect who has asked for counsel. For example, police do not impermissibly 'initiate' renewed interrogation by engaging in routine conversations with suspects about unrelated matters. And police legitimately may inquire whether a suspect has changed his mind about speaking to them without an attorney. E.g., State v. Turner, 32 Ore. App. 61, 65, 573 P.2d 326, 327 (1978); State v. Crisler, 285 N.W.2d 679, 682 (Minn. 1979); State v. Marcum, 24 Wash. App. 441, 445-446, 601 P.2d 975, 978 (1979)." Id., 490.

Unquestionably, the defendant invoked his right to counsel. "I think I better get a lawyer" could hardly be more clear; however, subsequent legitimate

questions to find out whom he wanted showed that the request was not as unequivocal as it appears to be on its face. Acquin stated, among other things, that "it wasn't really an attorney that he wanted, it was just somebody that he could trust. He wanted to sit and have somebody sitting with us that he trusted before he had any further conversation."

We note in this regard Fifth Circuit cases which foreshadowed the decision in Edwards v. Arizona, supra, and which the Edwards majority approved: "The rule in the Fifth Circuit is that a knowing and intelligent waiver cannot be found once the Fifth Amendment right to counsel has been clearly invoked unless the accused initiates the renewed contact. See, e.g., United States v. Massey, 550 F.2d 300 ([5th Cir.] 1977); United States v. Priest, 409 F.2d 491 ([5th Cir.] 1969). Waiver is possible, however, when the request for counsel is equivocal. Nash v. Estelle, 597 F.2d 513 ([5th Cir.] 1979) (en banc). See Thompson v. Wainwright, 601 F.2d 768 ([5th Cir.] 1979)." Edwards v. Arizona, supra, 486 n. 9.

In Nash v. Estelle, 597 F.2d 513 (5th Cir. 1979) (en banc), in upholding the admission of a confession, the court stated: "When police stop interrogation as required [after a request for counsel], admissions that later come at the initiative of a suspect are subject to the traditional analysis for voluntariness.... The same principle governs when...a suspect who has been informed of his rights expresses both a desire for counsel and a desire to continue the interview without counsel. Where the suspect's desires are expressed in such an equivocal fashion, it is permissible for the questioning official to make further inquiry to clarify the suspect's wishes." (Citations omitted.) Id., 517. In Nash v. Estelle, supra, the accused, Nash, was advised of his rights prior to questioning. His "equivocal" request for counsel began unequivocally: "Nash: Well, I don't have the money to hire one, but I would like, you know, to have one appointed. [Prosecutor] Files: You want one to be appointed for you? Nash: Yes, sir." Id., 516. The relevant dialogue is quoted in the

footnote.[12] In Thompson v. Wainwright, 601 F.2d 768 (5th Cir. 1979), also cited in Edwards v. Arizona, supra, the Fifth Circuit clarified the rule: "[W]henever even an equivocal request for an attorney

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12 "Nash: 'I understand that I do--I don't have to tell him anything, and what I say can be used against me in Court. I do not want to--I mean I do not want to have a lawyer present in Court, I mean at this time.

Files: The the place under that is--

Nash: If I want a lawyer present, I just put down I want him present?

Files: Please just tell us about it. Any time we are talking and you decide that you need somebody else here, you just tell me about it and we will get somebody up here.

Nash: Well, I don't have the money to hire one, but I would like, you know, to have one appointed.

Files: You want one to be appointed for you?

Nash: Yes, sir.

Files: Okay. I had hoped that we might talk about this, but if you want a lawyer appointed, then we are going to have to stop right now.

Nash: But, uh, I kinda, you know, wanted, you know, to talk about it, you know, to kinda, you know, try to get it straightened out.

Files: Well, I can talk about it with you and I would like to, but if you want a lawyer, well, I am going to have to hold off, I can't talk to you. It's your life.

is made by a suspect during custodial interrogation, the scope of that interrogation is immediately narrowed to one subject and one only. Further questioning thereafter must be limited to clarifying that request until it is clarified. When and if it is clarified as a present desire for the assistance of legal counsel, all interrogation must cease...." (Emphasis in original.) Thompson v. Wainwright, supra, 771.

Nash: I would like to have a lawyer, but I'd rather talk to you.

Files: Well, what that says there is, it doesn't say that you don't ever want to have a lawyer, it says that you don't want to have a lawyer here, now. You got the right now, and I want you to know that. But if you want to have a lawyer here, well, I am not going to talk to you about it.

Nash: No, I would rather talk to you.

Files: You would rather talk to me. You do not want to have a lawyer here right now?

Nash: No, sir.

Files: You are absolutely certain of that?

Nash: Yes, sir.

Files: Go ahead and sign that thing." Nash v. Estelle, 597 F.2d 513, 516-17 (5th Cir. 1979) (en banc).

We believe that Edwards v. Arizona must be read to include this common-sense Fifth Circuit rule, which was implicitly approved by the majority, and specifically stated in Justice Powell's concurring opinion.[13]

In the case before us, the defendant's request for counsel was more "equivocal" than Nash's. Although, like Nash,

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13 "[P]olice legitimately may inquire whether a suspect has changed his mind about speaking to them without an attorney." Edwards v. Arizona, 451 U.S. 477, 490, 101 S.Ct. 1880, 68 L.Ed.2d 378 (Powell, J. concurring in the result), reh. denied, 452 U.S. 973, 101 S.Ct. 3128, 69 L.Ed.2d 984 (1981). This rule is also in accord with the decision in State v. Scott, 626 S.W.2d 25 (Tenn. Crim. App. 1981). There, the police stopped questioning when the defendant requested counsel. On his way to the holding cell, however, the defendant stopped to talk to his girlfriend. The escorting officer "heard her informing appellant he should tell the truth. [The officer then] asked appellant if he wanted to talk about it or go ahead to the detention area." Id., 29. The court held that "[t]hese facts cannot be equated with a resumption of the interrogation as condemned by Edwards v. Arizona, supra." Ibid.

Acquin clearly asked for counsel, he also rejected every suggestion for obtaining an attorney, including talking to his own brother. Instead he stated that he would "tell the truth" if the police allowed Albert to be there. The trial court found that "the defendant's request for counsel was indecisive and under the circumstances Captain McDonnell was correct in making an inquiry into whether the suspect did or did not want counsel present." The record amply supports the trial court's conclusion that the defendant's request was "indecisive" and therefore equivocal. We cannot therefore say that this conclusion is clearly erroneous under the well-established standard of factual review. Practice Book §3060D; Kaplan v. Kaplan, 186 Conn. 387, 392, 441 A.2d 629 (1982); Pandolphe's Auto Parts, Inc. v. Manchester, 181 Conn. 217, 221-22, 435 A.2d 24 (1980).

The finding of indecisiveness alone, however, does not settle the question of admissibility of the confession. This exception to the general rule of Edwards is very narrowly circumscribed. The facts of this case demonstrate the limits of the

inquiry which can be made. McDonnell limited his clarifying questions carefully to the subject of whom Acquin wanted as his counsel. No question implied in any way that the request might be denied, or that it would be advisable to talk before obtaining counsel. Five hours passed before Albert arrived. McDonnell then told Acquin that the doctor was there and asked whether he still wanted to see him and to give a statement. The defendant answered affirmatively. Albert and Acquin conferred alone, then Albert called McDonnell in. McDonnell again explained the legal consequences of making a statement[14] and then asked whether Acquin wanted to tell them what happened the night before. When Acquin said "I don't want to tell you," McDonnell expressed his confusion, whereupon Acquin explained "[w]ell, what I mean is...I don't want to tell you, I want you to ask me questions ...." This clarification from the defendant indicated his desire to talk. The scope of questioning here compares favor-

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14 See footnote 7, supra.

ably with that of the prosecutor in Nash v. Estelle, supra, 516. The inquiries of McDonnell were limited to those necessary to ascertain that he was aware of the consequences of giving a statement.

The defendant's confession was not obtained in violation of Edwards v. Arizona, supra, because his request for counsel was equivocal.

3

Waiver

Our conclusion that the defendant's confession is not made inadmissible solely because he had previously asked for an attorney does not end the inquiry. The trial court correctly stated that "[t]he next question is whether the defendant 'voluntarily, knowingly and intelligently' waived his rights. The state has a 'heavy burden' of demonstrating that the suspect's constitutional rights have been respected. State v. Darwin, 29 Conn. Sup. 423, 432 [290 A.2d 593 (1972)]. Waiver has been defined as 'an intentional relinquishment or abandonment of a known right or privilege.' Johnson v.[Zerbst], 304 U.S. 458, 464 ... 58 S.Ct. 1019, 1023, 82 L. Ed. 1461, 1466 [1938]. This standard is

applied to an in-custody interrogation. Miranda, supra, 475." A finding of waiver involves two interrelated factual determinations: (1) did the defendant understand his rights; and (2) did he voluntarily relinquish them. State v. Wilson, Conn. (42 Conn. L.J., No. 37., pp. 1, 3) (1981); State v. Derrico, 181 Conn. 151, 157-58, 434 A.2d 356, cert. denied, 449 U.S. 1064, 101 S.Ct. 789, 66 L.Ed.2d 607 (1980); North Carolina v. Butler, supra. The trial court in its discretion makes these determinations, but that discretion must be "exercised in accordance with constitutional standards of due process." State v. Derrico, supra, 162-63. The trial court found, and the record indicates, that the defendant was given the Miranda warnings five times, that he understood his rights, and that neither threats nor physical force were used on the defendant. Moreover, the defendant had been arrested and advised of his rights several times before. One of the unusual facts of this case is that Albert, a professional psychiatrist who was called to the scene at the defendant's request, was present during the events leading up

to the confession. He witnessed the entire confession, and testified that in his opinion the defendant "seemed collected," and understood the meaning of the warnings given to him. Albert also stated that the confession was given "spontaneously" and that he felt the defendant had a psychological need to tell the story. Acquin also indicated twice that he wanted to tell the truth, but that he just wanted somebody he could trust (Albert) to be there.

We cannot say that, on the basis of the evidence before it, the trial court erred in concluding that the defendant knowingly and voluntarily waived his rights to counsel and to remain silent. There is simply no evidence that the circumstances were such as to "'overbear... [the accused's] will to resist....'" State v. Devine, 149 Conn. 640, 653, 183 A.2d 612 (1962); Culombe v. Connecticut, 367 U.S. 568, 602, 81 S.Ct. 1860, 6 L.Ed. 2d 1037 (1961).

On the basis of the foregoing we conclude that the trial court did not err

in admitting the defendant's confession.[15]

II

THE HEARSAY STATEMENT

At trial the defendant offered in evidence a signed written statement given to a state policeman by John Ricciuti,

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15 The defendant also claims that his confession was illegally obtained because at approximately 6:30 p.m. McDonnell "asked him [Acquin]: what other scratches he had beside the one[s] I can see on his face and his arms." Acquin responded by dropping his trousers to show a scratch or burn mark on his thigh. The defendant now contends that McDonnell's question violated the rule in Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378, reh. denied, 452 U.S. 973, 101 S.Ct. 3128, 69 L.Ed.2d 984 (1981), and that his confession therefore should have been suppressed.

We do not consider this episode to merit extensive discussion for several reasons. First, as outlined above, the request for counsel was equivocal and, therefore, did not bar all further questions. Second, there was no causal connection between the "scratches" question and the confession made more than five hours later after Albert had arrived and spoken to Acquin. See Edwards v. Arizona, supra, 488-92 (Powell, J., concurring in the result); Michigan v. Mosley, 423 U.S. 96, 107-11, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975) (White, J., concurring in the result). Cf. Brown v. Illinois, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975);

owner of a bar which the defendant had visited the night of the murders. Ricciuti, a fugitive from New Jersey authorities, could not be located and was unavailable to testify. The statement indicated that the defendant was not drunk at 1 a.m., and therefore contradicted the testimony of Deborah Veilleux that the defendant had slurred speech and "walked kind of staggered." The court refused to admit the Ricciuti statement on the ground that it was hearsay.

Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). Finally, it is an open question whether the "scratches" episode can be considered interrogation at all, because the defendant was asked only to supply nontestimonial evidence of the condition of his body which he might have been compelled to give without any violation of his constitutional rights, whether or not counsel was present. See Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966); see also United States v. Wade, 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed. 21 1149 (1967); State v. Adams, 176 Conn. 138, 141-42, 406 A.2d 1 (1978); State v. Chesney, 166 Conn. 630, 640-41, 353 A.2d 783, cert. denied, 419 U.S. 1004, 95 S. Ct. 324, 42 L.Ed.2d 280 (1974) and cases cited therein.

Unquestionably the statement was hearsay, and therefore admissible only if permitted under some exception to the rule. Izzo v. Crowley, 157 Conn. 561, 563, 254 A.2d 904 (1969); see Tait & LaPlante, Handbook of Connecticut Evidence (1976) c. 11. The defendant has not shown or even argued that the Ricciuti statement comes within any exception recognized in Connecticut. See, e.g., State v. Gold, 180 Conn. 619, 630, 431 A.2d 501, cert. denied, 449 U.S. 920, 101 S.Ct. 320, 66 L.Ed.2d 148 (1980); State v. DeFreitas, 179 Conn. 431, 450-41, 426 A.2d 799 (1980). Moreover, here, the trial court specifically found that "there was no evidence that the circumstances surrounding the statement provide any sanction for ascertaining its truth..."; that is, the trial court did not find it trustworthy.[16]

16 Because of this conclusion by the trial court, we need not review whether the statement can be considered exculpatory as we defined the word in State v. Gold, 180 Conn. 619, 630 n. 5, 431 A.2d 501, cert. denied, 449 U.S. 920, 101 S.Ct. 320, 66 L.Ed.2d 148 (1980).

Nothing before us indicates that this determination was an abuse of discretion, and we find no error in the trial court's decision to exclude the statement.

III

CHALLENGE TO THE JURY ARRAY

The jury array from which the jury panel was chosen in this case was 44.82 percent female, while 52.69 percent of registered voters in New Haven County were female, a difference of 7.87 percent. The defendant, after presenting only these facts to the trial court, moved to dismiss the jury panel on the ground that the array from which it was selected was not a fair cross-section of the community. The trial court denied the motion, stating that the difference was statistically significant but that it did not constitute in any way an unrepresentative or unfair cross-section of the community.

"In order to establish a prima facie violation of the fair cross-section requirement, the defendant must show (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group

in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury selection process." State v. Frazier, Conn. (43 Conn.L.J., No. 6, pp. 16, 17) (1981), quoting Duren v. Mississippi, 439 U.S. 357, 364, 99 S. Ct. 664, 58 L.Ed.2d 579 (1979).

The defendant presented no evidence whatsoever to show that this underrepresentation was due to systematic exclusion of the group. State v. Frazier, supra, 18. Therefore, he failed to make the required prima facie showing, and there was no error in the denial of his motion.

There is no error.

In this opinion the other judges concurred.

APPENDIX B

(13052)

STATE OF CONNECTICUT

At A Superior Court Held At Waterbury, Within And For the Judicial District Of Waterbury, On The Thirtieth Day of November, A.D., 1979.

State of Connecticut

VS.

Lorne Acquin, of Waterbury

JUDGMENT

Upon the application of Walter Scanlon, Assistant State's Attorney for the Judicial District of Waterbury, a Bench Warrant was issued on July 23, 1977, charging Lorne Acquin with the crime of murder in violation of Section 53a-54a of the General Statutes and of the crime of Arson in violation of Section 53a-111 of the General Statutes, and said action came thence to July 24, 1977, when said defendant appeared, and said action came thence to August 2, 1977, when, upon application by the State's Attorney, a Grand Jury was summoned and ordered to convene on September 7, 1977, and said action came thence to September 7, 1977, when said Grand Jury returned a true bill

on each of nine said charging said defendant with the crime of intentional murder in violation of Section 53a-54a of the General Statutes and in each of said counts, and said action came thence to September 15, 1977, when the defendant again appeared and entered a plea of Not Guilty to each of the nine (9) counts of said Grand Jury Indictment and to an Information charging said Lorne Acquin with the crime of Arson in the First Degree, in violation of Section 53a-111 of the General Statutes, and elected a trial by jury as to both the Indictment and Information charges, and said action came thence to May 21, 1979, all pretrial motions having been heard, the trial of said action to the jury commenced, and thence to October 18, 1979, when all evidence having been submitted, said action was committed to the jury, and thence to October 19, 1979, when jury returned a verdict of Guilty on each of nine counts of Murder and on one count of Arson in the First Degree, and when said defendant filed a Motion for New Trial and a Motion for Acquittal, and when said action was continued to November 30, 1979, for sentencing and when a pre-

sentence investigation and report was ordered, and thence to November 20, 1979, when the Motions for New Trial and for Acquittal were denied, and thence to the present time when the defendant appeared for sentencing.

Whereupon, It Is Adjudged that the defendant, Lorne Acquin, be committed to the custody of the Commissioner of Corrections, at Somers, for a period of not less than 25 years nor more than life on the first count of said indictment, and to a period of not less than 10 years nor more than life on each of the other eight counts of said indictment, said sentences on all nine counts to run consecutively. Further, said defendant Lorne Acquin is committed to the custody of said Commissioner of Corrections, at Somers, for a period of not less than 10 years nor more than 20 years on the charge of Arson in the First Degree, said sentence to run concurrent with the sentences imposed on the nine counts of said Indictment, effective sentence, 105 years to life.

By the Court

Francis J. Butler
Clerk

APPENDIX C

NO. 9891

STATE OF CONNECTICUT SUPREME COURT

VS. STATE OF CONN.

LORNE J. ACQUIN JULY 27, 1982

MOTION TO REARGUE

Pursuant to Sections 3111, et seq., of the Practice Book, the defendant moves to reargue the appeal in this case for the following reasons:

1. In State v. Ostroski, ___ Conn. ___, 440 A.2d 166, 167 (1981), this court expressly held: "Whether and when a person is taken into custody is a question of fact....It is the function of the trial court, not this court, to find facts. Whether or not the defendant was in custody is a critical threshold question which must be determined before we can properly review the claims made in this appeal." (Emphasis supplied.)

2. This court's opinion in the present case, 187 Conn. 647, consists primarily of findings of facts, most of which were not found by the trial court and most of which are and were actively contested between the parties and among the witness-

es. These factual findings by this court are a crucial part of the court's opinion. This court, in its opinion, neither overruled, cited nor distinguished its holding in Ostroski, supra.

3. This court has no jurisdiction to sit as a finder of facts and, because it neither sees nor hears any of the witnesses, is uniquely unqualified for such a function.

4. Neither at nor before oral argument were the parties advised that this court would sit as a trier of facts. Accordingly, no effort was made by the parties to marshall their evidence nor to persuade the court to adopt one or another disputed factual claim. For this court to sit, as it has in this case, as a trier of disputed facts and decide which witnesses it believes and which it does not -- without advance notice to the parties and in contravention of established Connecticut law -- denies this defendant due process of law in violation of the Fourteenth Amendment to the United States Constitution. Moreover, because Lorne J. Acquin is the only appellant in Connecticut history who has lost an appeal in this

court because this court chose to sit sue sponte as a trier of disputed facts, the court's action deprives Mr. Acquin of equal protection of the laws in violation of the Fourteenth Amendment.

5. As in Ostroski, supra, the trial court in this case made no factual finding as to "whether and when [Mr. Acquin was] taken into custody...." 440 A.2d at 167. Nevertheless, this court in violation of its holding there found that he was taken into custody at 2:00 P.M., as the state claimed, rather than at 9:30 A.M., as the appellant claimed. This court had no power to make such a finding of fact.

6. The court below, in its findings of facts, expressly assumed that the defendant was arrested without probable cause. It made no findings as to what facts the police did or did not know at various points in the arrest proceedings. [See Appendix to brief of appellant, pp. A-70, et seq.] This court chose to find as a fact that there was probable cause to arrest Mr. Acquin, and made that finding upon the basis of this court's own, sua sponte, findings of subordinate facts

which (a) were not found by the court below and (b) have not been agreed to by the parties and (c) are, in fact, hotly disputed. Among other things:

A. This court found that the defendant "voluntarily agreed to accompany the officers...to Meriden." There was no such evidence and no such finding by the court below. In fact, after the defendant had entered the police cruiser he was subjected to a police search and seizure of his property [7/5/78 Tr. p. 13; 7/11/78 Tr. p. 82; 7/13/78 Tr. pp. 38, 41, 43, 44; 9/14/78 Tr., Stipulation, p. 41] and the officers then were "instructed" to take Mr. Acquin to Meriden without regard to his wishes or willingness to go. [7/5/78 Tr. p. 15; 7/17/78 Tr. p. 12] Trooper Blais then informed Mr. Acquin "that we... were to go to the Meriden Complex for the interview." Mr. Acquin "asked why we were going to Meriden," and Blais responded: "That is where we were told to go." [7/13/78 Tr. p. 63] It is impossible to imagine on what basis this court reached its finding that Mr. Acquin "voluntarily agreed to accompany the officers...to Meriden," on the basis of such testimony

in the trial court. 187 Conn. 656.

B. This court found as a fact that Mr. Acquin had been at the Beaudoin house "from at least 7:30 to 10 p.m. on the previous evening, July 21." 187 Conn. at 657. The court below made no such finding and there is no such evidence. Indeed, Alden Brooks himself (mentioned at page 658 of the Court's opinion) had given a written statement to the State Police at 8:40 A.M. on July 22, 1977, stating that he was at the Beaudoin house from approximately 9:00 P.M. until approximately 10:45 P.M. and Mr. Acquin was not there at all during that time. That statement was in evidence before the trial court and was submitted to this court as part of the appeal.

C. This court found as a fact that "Acquin had recent scratches on his face...." 187 Conn. at 657. The court below made no such finding and this issue is very much in dispute. At oral argument, defense counsel expressly argued to this court that a viewing of the photographs taken of the defendant after he had signed his confession would demonstrate only minimal marks on his body and not the sort of markings claimed by certain police

witnesses.

D. This court found as a fact that "Acquin...had not mentioned it [being mugged the previous evening] at all in his oral statement to the police at approximately 9:30 a.m." 187 Conn. at 657-58. The trial court made no such finding and, in point of fact, the evidence at the suppression hearing was to the contrary. It was testified at the suppression hearing that when Mr. Acquin entered the police cruiser with Troopers Blais and Hamila, the police asked him about the scratch on his face. Mr. Acquin responded that he had sustained the scratch in a fight the previous night, when he had been jumped and robbed. [7/24/78 Tr. pp. 17-18]

E. This court found as a fact that Mr. Acquin was not in custody while in the Meriden police headquarters and that the defense had made no claim that he was restrained there. 187 Conn. at 655-56. Of course, the court below made no such finding. As a matter of fact, moreover, Lt. Shay himself testified at the suppression hearing that when Mr. Acquin was taken to Meriden he was "a very serious suspect in this case" and that he

was undecided whether he would ever again permit Mr. Acquin to leave police custody. He testified that "a lot would depend on what he said and how he acted." [7/17/78 Tr. pp. 100-01, 7/6/78 Tr. pp. 15-16] It was Shay who was in charge of the investigation and, although this Court found that the police agreed to take Mr. Acquin home after the Meriden interrogation, the evidence at the suppression hearing showed that while Acquin was still in Meriden Shay expressly ordered "that Acquin should not be released" and further ordered Trooper Zdanowicz to take him at once to the State Police barracks at Bethany. [7/6/78 Tr. pp. 58-59, 117, 112; 7/17/78 Tr. pp. 14-15, 99]

F. This court found as a fact that Mr. Acquin had a reputation as a violent person. 187 Conn. at 658. The trial court made no such finding. Contrary to this court's claim, that assertion certainly is not "uncontested" and in fact is denied. Mr. Acquin's police record was made an exhibit at the suppression hearing, was submitted to this court as part of the appeal, and shows no crimes of violence ever having been alleged against Mr. Acquin.

G. This court found as a fact that Alden Brooks had "offered an acceptable account of his own whereabouts" prior to Mr. Acquin's arrest. 187 Conn. at 658. The trial court made no such finding. Although there was evidence below that Brooks had given the police a statement prior to 9:00 A.M., there was absolutely no evidence that the police considered it "an acceptable account...." On the contrary, Lt. Shay testified that he still considered Brooks a suspect after that time and many witnesses -- including Brooks himself -- testified that in fact his statement had been false. In fact, he claimed to have been having sex with Mrs. Beaudoin on her porch shortly before the time at which she was murdered.

7. This court found as a fact that, after Mr. Acquin had asked for an attorney and had been further questioned, "McDonnell, Hamila and Acquin drove to a restaurant nearby, where they ate hamburgers in the police cruiser." 187 Conn. at 662. The court below made no such finding, and Mr. Acquin testified directly to the contrary. He testified that he was afraid to eat anything. "They might have put something in

the food or the drink." [9/5/79 Tr. p. 33]

8. This court found as a fact that "[i]t is unquestioned that Acquin was read the Miranda rights before any statement was taken...." 187 Conn. at 669. Although the court below found that Mr. Acquin was read his Miranda rights during the morning and once in the early afternoon, there is no finding by the trial court that the rights were read before the statement was taken. On the contrary, the court below expressly found that the rights were given before the written confession but made no finding as to whether they were given before the oral confession which preceeded it. [Appendix to appellant's brief, p. A-69.] As a matter of fact, there was testimony that such rights were not read at Bethany until after the oral confession had been concluded.

9. At 187 Conn. pp. 663-65, 670-71 and 676, this court makes detailed findings of fact concerning the events at the Bethany state police barracks beginning with the arrival of Dr. Joel Albert. The court below made none of these findings. Moreover, in making the findings here,

this court accepted as true portions of the testimony of Dr. Albert and portions of the testimony of Captain McDonnell, disregarded conflicting portions of the testimony of both witnesses, and chose not to believe the directly contrary testimony of the appellant concerning these very events. As but one example, this court found, 187 Conn. at 663: "Neither Acquin nor Albert mentioned an attorney." Contrary to this court's finding, Mr. Acquin testified in part as follows:

> Q: And, tell us exactly what happened [when Dr. Albert arrived].
> A: He came in and he was joking and laughing with McDonnell. And, he saw me. He straightened up. I got up to shake his hand. I said, 'Hi, Doc, how are you doing.' He said, 'All right.' I said, 'Can we talk alone?' He turned around and asked the Captain. The captain left.
> Q: And, now, how excatly did he greet you?
> A: Placed his arm around me, shook my hand.
> Q: And, then he asked Captain McDonnell if --
> A: If he could be alone with me.
> Q: What happened then?
> A: We sat down and we talked.
> Q: Tell us what was said.
> A: I says, "Doctor Albert,' I says, 'these guys are trying to get me for nine counts of murder. They

won't let me see nobody, call nobody. I want to give you my attorney's number so you can call him for me.'

Q: And what happened then?

A: He said no.

Q: He said no?

A: Well, he said, 'I don't think I can do that.'

Q: What was your reaction to that?

A: The bottom fell out.

Q: What do you mean by that?

A: I had nowhere to turn, nobody to trust. I couldn't get in contact with nobody. My own psychiatrist turned on me.

Q: Did you come to any decision at that point?

A: I might as well go along with what anything they had to say.

[9/5/79 Tr. pp. 38-39]

10. This court held, 187 Conn. at 678: "We cannot say that, on the basis of the evidence before it, the trial court erred in concluding that the defendant knowingly and voluntarily waived his rights to counsel and to remain silent. There is simply no evidence that the circumstances were such as to 'overbear...[the accused's] will to resist....'" (Emphasis supplied.) This court's holding in that regard is directly contrary to the facts clearly set forth in the record and in the transcript of the suppression hearing which this court

so freely consulted in making the findings of fact recited above and others. The court below found: "Both sides used expert psychiatric testimony regarding the defendant's mental ability to make a voluntary confession at the suppression hearing." [Appendix to appellant's brief, p. A-80] Thomas Szasz, M.D., a psychiatrist with an international reputation as an expert witness in judicial proceedings, testified on behalf of the appellant that "Mr. Acquin's ability to give voluntary consent was completely overwhelmed and negated by the experiences to which he was exposed prior to the confession and during it." [7/26/78 Tr. p. 32] He elaborated extensively upon that conclusion in his testimony at the suppression hearing. [Id., pp. 33-35, 43-44, 46-47, 56, 59-60, 65-66, 84, 86-89, 113, 124] Richard J. Loewenstein, M.D., a member of the faculty of the Yale Medical School and the Chief Resident Psychiatrist at Yale-New Haven Hospital [7/9/78 Tr. pp. 4-5], testified as an expert defense witness at the suppression hearing that "in the context given, given the extremely stressful situation that Mr. Acquin was under, moving

about, questioning, repeated questioning, statements being taken, further statements being taken,... sitting with the police throughout an entire day, being taken from place to place, that this was a highly stressful circumstance, that that is demonstrated by the statement of Captain McDonnell and the conversation that is recorded there, leading up to the request for Dr. Albert and that given that context of things, that the effect of Dr. Albert was the final and culminating factor, which led to the overwhelming of Mr. Acquin's resistance to confessing and that because of the manner in which it took place, it could not be construed that the confession took place voluntarily...." [Id., p. 98] Based upon an analysis of Dr. Albert's own testimony in the context of his detailed review of all the evidence at the suppression hearing, moreover, Dr. Loewenstein further concluded: "Dr. Albert's behavior and activities were such as to so overwhelm Mr. Acquin that, in no way, could the confession be construed as voluntary." [Id., at p. 35] As the Fourth Circuit noted in Ferguson v. Boyd, 566 F.2d 873, 877 (4th Cir. 1977): "It has long been

recognized that involuntary confessions may be exacted as a result of mental coercion as well as physical abuse." See People v. Parks, 579 P.2d 76 (Colo. 1978); Commonwealth v. Irvin, 341 A.2d 132 (Pa. 1975).

11. This court is without power to engage in fact-finding as it did in this case. The opinion of the court depends upon such fact-finding upon disputed material evidence, and therefore the opinion cannot stand if this court is to follow the law it has itself articulated within the last year.

12. Having chosen to engage in fact-finding, this court cannot consistent with due process of law find material facts which are directly contrary to the evidence presented to the court below. With respect to the psychiatric testimony, as with respect to many other aspects of its opinion, this court did find material facts directly contrary to the evidence presented to the court below.

13. One of the ways in which this court inaccurately characterized the evidence was the essential but false factual finding upon which the court based its

ruling that the challenge to the jury array was properly overruled. This court found: "The defendant presented no evidence whatsoever to show that this underrepresentation was due to systematic exclusion of the group. ...Therefore, he failed to make the required prima facie showing, and there was no error in the denial of his motion." 187 Conn. at 681. This court's finding is totally contrary to the facts. As was pointed out in the appellant's brief, pp. 64-65, the appellant and the state entered into a stipulation of facts with respect to the challenge to the array. [4/23/79 Tr. pp. 3, et seq.] It was stipulated that all the members of the jury array were categorized by the Judicial Department by sex in official records. [Ibid.; Ex. 1 at Ch. to Array hearing.] It was stipulated that the jury committees from all the towns in the Judicial District submitted names to the Jury Commission for inclusion on the jury array; that questionnaires were mailed to each of those persons and were returned by them to the Jury Commission; that the jury commissioners thereupon selected the array upon the basis of the information contained in the question-

naires, which included the sex of each person responding. And it was stipulated that the array consisted of 2,336 persons selected individually in that manner. [Id., at pp. 5-6] Thus, a prima facie case was made out by the appellant because he proved without contradiction that (1) women were underrepresented on the array to a statistically significant degree; and (2) the officials who selected the array had an opportunity to discriminate. E.g., State v. Nims, 180 Conn. 589, 430 A.2d 1306 (1980); Casteneda v. Partida, 430 U.S. 482 (1977); Villafane v. Manson, 504 F.Supp. 78 (D.Conn.), aff'd 639 F.2d 770 (2d Cir. 1980).

14. For all these reasons, the opinion of this court should be vacated and this case should be set for re-argument.

THE DEFENDANT-
APPELLANT,

LORNE J. ACQUIN

BY

JOHN R. WILLIAMS
His Attorney

APPENDIX D

NO. 9891

STATE OF CONNECTICUT SUPREME COURT

VS. STATE OF CONNECTICUT

LORNE J. ACQUIN SEPTEMBER 22, 1982

O R D E R

THE DEFENDANT'S MOTION TO REARGUE HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED DENIED.

BY THE COURT,

Donald H. Dowling
CHIEF CLERK

APPENDIX E

MOTION TO SUPPRESS CONFESSION, STATEMENTS AND ADMISSIONS

The defendant moves to suppress any and all statements, confessions and/or admissions made by him to any official of the State of Connecticut or any of its subdivisions, on July 22, 1977, or at any time thereafter. The defendant further moves to suppress any and all direct and/or indirect fruits of any such statement, confession or admission. The defendant further moves to suppress any and all testimony concerning any of the foregoing. In support of this motion the defendant represents as follows:

1. All such statements are the fatally-tainted fruit of his initial arrest in this case. Such arrest was made in violation of his rights under the Fourth and Fourteenth Amendments to the United States Constitution and under Article I of the Connecticut Constitution because it was made without probable cause and without a warrant.

2. Any and all such statements, confessions and/or admissions were obtained

in the absence of any attorney.

3. At no time prior to making any such statement, confession, and/or admission did the defendant knowingly, intelligently or voluntarily waive his right to remain silent or his right to the assistance of counsel as provided by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

4. Any and all such statements, confessions and/or admissions were obtained by State Police officers and/or other public officials by the use of force, coercion, intimidation and/or duress in that the defendant was detained illegally and without probable cause for many hours, during all of such time the defendant was denied access to any friend or any attorney or any other person not involved in this interrogation, defendant during such time was transported against his will to various locations throughout the State of Connecticut and was thereby placed in great fear and caused to become confused and disoriented, the defendant was for long period of time deprived of proper sleep and nourishment, the defendant at

various times during his interrogation was subject to physical force applied against him by various police officers and was subjected to searches of his body in violation of his rights under the Fourth and Fourteenth Amendments to the United States Constitution, the defendant's psychiatrist (a State employee) was utilized by the police to bring further pressure to bear upon the defendant to make such statements, the defendant was told by police officials that he would not be permitted to leave police custody until he made the statements desired by the police, the defendant was threatened verbally with physical violence if he did not confess, the defendant was promised immediate release if he did confess, and other methods of coercion were also brought to bear upon the defendant by the said State officials.

5. At the time he made said statements, confessions and/or admissions, the defendant was not of sound mind.

6. All such statements, confessions and admissions were obtained from the defendant in violation of his rights under the Fourth, Fifth, Sixth and Fourteenth

Amendments to the United States Constitution and under Article I of the Connecticut Constitution.

THE DEFENDANT

BY JOHN R. WILLIAMS
His Attorney

Filed September 21, 1977

O R D E R

The foregoing motion having been heard, it is hereby ORDERED: DENIED.

THE COURT

March 2, 1979 Wall, J.

APPENDIX F

MEMORANDUM ON DEFENDANT'S MOTION TO SUPPRESS CONFESSION, STATEMENTS AND ADMISSIONS

I

In the early morning hours of July 22, 1977, the police found nine bodies in the burnt out house of Frederick and Cheryl Beaudoin on Cedar Hill Drive in Prospect, Connecticut. The dead bodies were those of Mrs. Beaudoin, her seven children and an overnight guest, Jennifer Santoro. All the children had been beaten, Mrs. Beaudoin had been stabbed and some of the children were tied up with various bindings.

At approximately 9:30 a.m. on that same day the police went to 4 Glenridge Street in Waterbury, Connecticut, where the defendant, Lorne Acquin, was living with his girlfriend, Joyce Graham. The police asked the defendant to accompany them to the Meriden State Police Complex for questioning. After the defendant arrived at Meriden headquarters he was read a standard form Miranda card which he refused to initial. The police took a written statement from the defendant as to

his whereabouts on the night of July 21, 1977, which the defendant refused to sign. The defendant also refused to take a polygraph test.

At about 1:30 p.m., the defendant left Meriden with the police to go home to Waterbury. One police officer was dropped off at the State Police Command Post at the Prospect Town Hall, and the police cruiser continued along Route 69 toward Waterbury. While they were driving an order came over the police radio to bring the defendant to Bethany Troop 1. The defendant stated that he didn't want to go and while the cruiser was still moving, he opened the car door. The defendant got out of the car and started walking on Route 69 toward Waterbury. Other police came to the scene and the defendant was brought back to the police car and then to the Prospect Command Post.

The defendant was again advised of his Miranda rights after he arrived at Prospect and again he refused to sign the card. He was questioned as to his activities for the previous three days and a second written statement was prepared. At

approximately 5:45 p.m., the defendant, in the midst of the interrogation, asked to see a lawyer. The police captain who was with the defendant at the time asked him who he wanted and whether he had anyone in particular in mind. The defendant said that there wasn't an attorney that he wanted or trusted. Instead the defendant requested that he be allowed to see a Dr. Joel Albert, who was a state psychiatrist.

The defendant was brought by the police to the Troop I State Police Barracks at Bethany, at his request, to await the arrival of Dr. Albert. The defendant was read his Miranda rights shortly after he arrived at the barracks. Dr. Albert arrived at Bethany at about 11:45 p.m. and went to see the defendant. Soon after, the defendant, in the presence of Dr. Albert and the police, gave an oral confession. Before a written statement was taken the defendant was again read his Miranda rights, which he refused to sign. After the confession was typed up, the defendant signed it and initialed each page. The defendant also signed some consent forms.

After giving this written confession the defendant was arrested on nine counts of murder and arson.

In a motion filed with this court on September 21, 1977, the defendant moves to suppress any and all statements, confessions and/or admissions made by him to any official of the State of Connecticut or any of its subdivisions, on July 22, 1977, or at any time thereafter. The defendant maintains three separate grounds for his motion: (1) defendant's confession was fatally tainted by his unconstitutional detention, (2) defendant did not waive his fifth and sixth amendment rights to remain silent and to have the assistance of counsel, and (3) defendant's confession was not voluntary. Each issue will be addressed in turn.

II

The defendant contends in part II of his brief that he was arrested during the morning of July 22, 1977, that the arrest was without a warrant and without probable cause. It should be mentioned that the defendant was not formally arrested until after he made the confession, when he had

been in custody approximately twenty hours.

The defendant claims that the time of the warrantless arrest was around 9:30 a. m. on the morning of July 22, when he was picked up for questioning at his house in Waterbury. The defendant states that probable cause for the arrest must be determined as of that time, and that the objective facts fail to establish probable cause. Assuming the detention was illegal, any statements or confessions obtained after such detention should be excluded, citing Wong Sun v. United States, 371 U.S. 471 (1963), 83 S.Ct. 407, 9 L.Ed.2d 441.

However, Wong Sun does not stand for the proposition that any confession made in the course of, or following, an illegal detention, whether or not preceded by, or incidental to, an illegal arrest, is per se inadmissible as a matter of law. State v. Traub, 151 Conn. 246, 249. Even assuming the detention in this case was illegal, a confession made during such detention can be admitted if the state proves that (1) the confession was truly voluntary and

(2) the confession was not caused or brought about by, or the fruit of, the illegal detention. State v. Traub, supra, 250. The question of whether a confession is the product of a free will under Wong Sun must be answered on the facts of each case. No single fact is dispositive. Brown v. Illinois, 442 U.S. 590, 603 (1975), 95 S.Ct. 2254, 45 L.Ed.2d 416. In Brown the court states (pp. 603-604) that the factors to be considered in determining whether the confession is obtained as a result of an illegal arrest include: (1) Miranda warnings, (2) temporal proximity of the arrest and the confession, (3) presence of intervening circumstances, and (4) purpose and flagrancy of the official misconduct.

Assuming for the purposes of argument that the detention of the defendant was illegal, an examination of the facts shows that the defendant's detention was not an operative factor in bringing about the confession. As to the first factor, the defendant was given numerous Miranda warnings while he was in police custody. The first warnings were given after the de-

fendant arrived at the Meriden State Police Complex, at approximately 10:30 A.M. on June [sic] 22, 1977. As to the second factor of temporal proximity of the arrest and the confession, assuming that the arrest took place when the defendant was first picked up, almost fourteen hours separated the arrest and the confession. The cases cited in defendant's brief, where courts relied on Wong Sun to exclude confessions made after extended periods of detention, involved detentions which ranged from twenty-nine to sixty-eight hours before the confession. (Defendant's brief, p. 126.) Concerning the third and fourth factors there was no official misconduct during the defendant's detention. No force was used upon him nor were any threats, promises or offers made to him. The defendant was not abused physically or mentally. He was not physically restrained in any way.

Assuming the detention was illegal and without probable cause, there was no evidence submitted that such detention was an operative factor in causing or bringing about the confession.

III

The second issue which defendant raises in his motion to suppress is that he did not waive his fifth and sixth amendment rights to remain silent and to have the assistance of counsel during police interrogation. It is not disputed that the defendant received several Miranda warnings while he was with the police at Meriden, Prospect, and Bethany and before he gave his written confession. The question is whether the defendant waived his Miranda rights when he gave his confession.

Miranda deals with the admissibility of statements obtained from a person who is under custodial police interrogation and the necessity for procedural safeguards to prevent a person from incriminating himself. Miranda v. Arizona, 384 U.S. 436, 439 (1966), 86 S.Ct. 1602, 16 L.Ed.2d 694. Custodial interrogation, for Miranda purposes, means "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." (p. 444)

Miranda is quite explicit about the procedural safeguards to be employed during such custodial interrogation:

> "He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the proseuction at trial, no evidence obtained as a result of interrogation can be used against him." (p. 479)

The defendant conceded in his brief that the police read him his Miranda rights at least five times before he gave his written confession. (Defendant's brief, p. 138.) The Miranda requirement that the defendant be given a full and effective warning of his rights at the outset of the interrogation process appears to be satisfied.

The next question is whether the defendant "voluntarily, knowingly and intelligently" waived his rights. The state has a "heavy burden" of demonstrating that the suspect's constitutional rights have been respected. State v. Darwin, 29 Conn. Sup. 423, 432. Waiver has been defined as "an intentional relinquishment or abandonment of a known right or privilege." Johnson v. Zerbat [sic], 304 U.S. 458, 464 (1938), 58 S.Ct. 1019, 1023, 82 L.Ed. 1461, 1466. This standard is applied to an in-custody interrogation. Miranda, supra, 475.

The defendant asserts that because he refused to initial the Miranda warning cards, he could not waive his rights to remain silent and to have counsel. How-

ever, defendant's refusal to sign an acknowledgment of the Miranda warnings given to him does not preclude finding an effective waiver of his rights. United States v. McNeil, 433 F.2d 1109, 1113 (1969).

The defendant correctly points out that his request at 5:45 p.m. on July 22, 1977, to see an attorney is particularly significant under the case law (defendant's brief, p. 134) for under Miranda, "[i]f the individual states that he wants an attorney, the interrogation must cease until an attorney is present." (p. 474) We must look closely at the facts as brought out at the hearing on this motion to suppress to determine whether the defendant waived his right to counsel. At approximately 5:45 p.m., when the defendant was at the Prospect Command Post, Trooper Hamila who had been with the defendant, came out of the storage room to speak to Captain McDonnell. The testimony of Captain McDonnell follows:

"Q Do you recall at somewhere around six o'clock Trooper Hamila coming out of the storage room to you?

A Yes.

Q You recall where--what it is he said to you?

A Yes. He came over to me. I was out on the larger--larger room and then he said that Acquin has asked to--asked for an attorney.

Q What did you say to Hamila?

A I told Hamila to go ahead and eat, that I would go in and talk with Lorne Acquin.

Q What, if anything, did Hamila do?

A I am not-- I don't know of my own knowledge what he did. He left. I went in the room. And, he--

Q He left?

A He left my presence. So--I know he was hungry and he was talking about eating for quite a few hours. So, that is the reason I told him to go eat.

Q Did he mention anything to Acquin about eating in your presence during that afternoon?

A Yes, on at least two or more occasions while I was in the room Trooper Hamila asked Lorne Acquin if he wanted anything to eat. And, Acquin said: no, he didn't, he didn't want to eat.

Q All right. Now, it was in the vicinity of six o'clock when you talked to Trooper Hamila regarding this lawyer; is that right?

A That's right.

Q And, he left. What did you do?

A I went in the room with Lorne Acquin and shut the door. And, it was just he and I in the room at that time.

Q When you entered the room was there anybody else there besides Acquin?

A No.

Q What, if anything, did you say to Acquin?

A I told him that: Trooper Hamila told me that you want an attorney.

Q What did he say?

A He said: yes, he did.

Q And, then what did you say?

A I asked him who he wanted. And, there were very long pauses before he would respond to my questions. And, then he said he didn't know; asked him: did he have anyone in particular in mind. He said no. I asked him: how about the attorney that you had the last time. And, he told me that he didn't trust that attorney and he didn't want him. I asked him--told him that: was there anybody else, another attorney. He said no, there wasn't another attorney that he wanted or trusted. I asked-- Then I told him: if he couldn't pick an attorney that I

would make calls and get a public defender or the state would provide an attorney for him. And, he replied to that that he didn't want the attorney that we--that I would call. He said: it would be just like talking to another cop. He didn't want any attorney that we choose. I then asked him about his family. I told him: I was pretty sure that his brother was in the building someplace, although I hadn't seen his brother, could his brother get an attorney for him.

Q What did he say?

A He said no. He didn't want his brother to get involved. He didn't want his brother to even know he was in the building or he didn't want his brother to know that he was involved here in the building with us.

Q Then what happened?

A Then we continued to talk about how would we find him an attorney, how would we get an attorney for him. And, he said that he--it wasn't really an attorney that he wanted, it was just somebody that he could trust. He wanted to sit and have somebody sitting with us that he trusted before he had any further conversation. And I asked him who that, you know--is there such a person, who can we get for you. And, he suggested a Dr. Albert, who I was not familiar with and didn't know who he was. And, I asked who he was and how he knew him. And, he told me that he knew him from the New Haven Jail and

he thought he was employed at the New Haven Jail.

About that time I went out to Lieutenant Shay and I told Lieutenant Shay that he wanted a Dr. Albert and to get a hold of Dr. Albert and have him come to the command center where we were.

Q Did you ask Acquin whether or not Dr. Albert was a lawyer?

A Yes, I did. And, he said that he knew he was a-- I think he was referring to him by a slang expression. He was calling him either a shrink or a head doctor or something like that, but wasn't sure whether or not he was an attorney. And, I told him that, you know, that Dr. Albert couldn't play the part of an attorney if, in fact, he wasn't an attorney. And, Acquin just kept saying that he wasn't really concerned about that, what he wanted was somebody to sit in that he could trust and be with him.

Q Did he say he trust Dr. Albert?

A He said he trusted a Dr. Albert very, very much. In fact, he said that, while this conversation was going on, that he had told me and Dr. Albert some things that we were the only two he had ever told, he hadn't even told some of his family members.

Q And, how long did this conversation go on?

A Well, from the time I went in the room until I came out and told Shay-- I would say from a half to three quarters of an hour or so."

Later in his testimony Captain McDonnell stated that from the time he had the conversation with the defendant regarding a lawyer and the time Dr. Albert arrived at Bethany Barracks at approximately 11:40 p.m., he had had no conversation with the defendant regarding the deaths in Prospect. After Dr. Albert arrived the defendant wanted the police to ask him questions and then he gave a detailed confession.

Once the defendant indicated a desire to obtain counsel, the police correctly stopped their interrogation concerning the deaths. However, the defendant's request for counsel was indecisive and under the circumstances Captain McDonnell was correct in making an inquiry into whether the suspect did or did not want counsel present. Nash v. Estelle, 530 F.2d 652, 658 (5th Cir. 1977). (Rehearing en banc same Decision 6/21/79.) The suspect's wishes can be explored to determine exactly what he wants. Nash, supra, 656.

The Miranda court cited Federal Bureau of Investigation (FBI) practice as consistent with Miranda procedure:

> "When the person who has been warned of his right to counsel decides that he wishes to consult with counsel before making a statement, the interview is terminated at that point, Shultz v. U.S., 351 F.2d 287 (1965). It may be continued, however, as to all matters other than the person's own guilt or innocence. If he is indecisive in his request for counsel, there may be some question on whether he did or did not waive counsel. Situations of this kind must necessarily be left to the judgment of the interviewing Agent." (p. 485)

Based upon the evidence presented at the hearing on the motion to suppress, the court is convinced that the state has met its burden of showing that the defendant "knowingly and intelligently" waived his right to counsel. Although the defendant had an opportunity to retain counsel, he opted instead for the presence of Dr.

Albert, "somebody that he could trust." The police told the defendant that the state would provide an attorney for him and that the police would call any attorney that he wanted. The police also asked the defendant whether he wanted his brother to get an attorney for him. The defendant said that it wasn't really an attorney that he wanted, just somebody that he could trust to be with him before he had any further conversation. It was the defendant, not the police, who suggested that Dr. Albert be brought to the barracks.

In a very similar case, Cobbs v. Robinson, 528 F.2d 1331 (2d Cir. 1975), the Second Circuit upheld the decision of the Connecticut Supreme Court in State v. Cobbs, 164 Conn. 402. In Cobbs, after the defendant indicated that he should call an attorney, he was given free use of a telephone and no attempt was made to interrogate him. The defendant made several calls including one to his grandmother. When the grandmother arrived at the police station, the defendant spoke with her and then made a full statement

to the police. (pp. 419-420) The court concluded that "an accused who requests counsel may thereafter voluntarily waive his right to counsel provided he has had in the interim a full opportunity to obtain counsel or to have an attorney appointed for him. The police may conduct an interrogation when such a knowing, intelligent and voluntary election to proceed without an attorney has been manifested by the defendant." (p. 420) The defendant in Cobbs made it clear through his words and actions and failure to make further mention of counsel that he had abandoned any intention of getting or consulting an attorney.

Likewise, in the present case, the defendant was provided a full opportunity to obtain counsel or to have counsel appointed for him. Instead he requested that he be able to see his psychiatrist, Dr. Albert. After speaking to his psychiatrist the defendant voluntarily waived his request for counsel. He also at no time expressed a desire to remain silent. It is an inescapable conclusion that Lorne Acquin knowingly and intelligently waived his fifth and sixth amendment rights to

remain silent and to have counsel during the interrogation.

IV

The third issue which the defendant raises in his motion to suppress is that defendant's confession was not voluntarily and therefore is excludable.

First, it should be mentioned that the state has the burden of proving by a fair preponderance of the evidence that the defendant's confession was voluntary. The Connecticut Supreme Court in the recent case of State v. Staples, Conn. (40 Conn. L.J., No. 2, p. 19) (1978) held that "a trial court should follow the preponderance of the evidence standard and not the reasonable doubt standard in determining whether or not the state has sustained its burden of proving voluntariness when a confession of a . . . defendant is offered into evidence." (p. 21)

Both sides used expert psychiatric testimony regarding the defendant's mental ability to make a voluntary confession at the suppression hearing. This is consistent with the case of People v. Parks, 579

P.2d 76 (Colo. 1978), where the court held that expert psychiatric testimony regarding the defendant's mental ability to make free and intelligent decisions at the time of his or her arrest is generally relevant to the issues before the court. The expert testimony offered by the state at the suppression hearing is supportive of the conclusion by the court that the defendant's confession was voluntary.

The Staples case is helpful in elucidating the factors which determine voluntariness:

> "The circumstances which enter into such a determination are many. The facts in each case must be closely scrutinized. Gallegos v. State of Colorado, 370 U.S. 49, 52, 82 S.Ct. 1209, 8 L.Ed.2d 325. '[T]he test of voluntariness is whether an examination of all the circumstances discloses that the conduct of 'law enforcement officials was such as to overbear [the defendant's] will to resist and bring about confes-

sions, not freely self-determined. . . .' Rogers v. Richmond, 365 U.S. 534, 544, [81 S. Ct. 735, 5 L.Ed.2d 760] (1961) . . . .' 'Put another way, the confession must be the product of an essentially free and unconstrained choice by the maker.' State v. Devine, 149 Conn. 640, 653, 183 A.2d 612, citing Culombe v. Connecticut, 367 U.S. 568, 602, 81 S.Ct. 1860, 6 L.Ed. 2d 1037."

It is the opinion of the court that the evidence at the hearing on the motion to suppress showed that the defendant's confession was spontaneous and voluntary. No physical force of threats were used on the defendant nor were any promises made. He was not physically restrained in any way. There were not more than three policemen with the defendant at any one time. The defendant was not denied any requests for food or drink. He was not under the influence of alcohol or drugs. He signed the written confession and initialed each page.

The state has sustained its burden of proving that defendant's confession was voluntary by a fair preponderance of the evidence. The conduct of the police officers in this case was not such as to "overbear the defendant's will to resist." The confession was the product of an essentially free and unconstrained choice by the defendant.

For the foregoing reasons, the defendant's motion to suppress confession, statements and admissions is hereby denied.

WALL, J.

March 2, 1979

APPENDIX G

PORTIONS OF TRANSCRIPT OF TAPE RECORDED INTERROGATION OF LORNE ACQUIN BY TROOPERS BLAIS, HAMILA AND ZDANOWICZ AT CONNECTICUT STATE POLICE HEADQUARTERS, MERIDEN, JULY 22, 1977, BEGINNING APPROXIMATELY 10:30 A.M.

(Suppression Hearing Exhibit A-1, supplemented by Suppression Hearing testimony of Troopers Hamila and Zdanowicz.)

(Inaudible)

BLAIS: Listen I mean they're gonna replace me so that I can go to the hospital with my wife. All Lt. Shay wants is simply a breakdown in communications as to your coming here. Its just, ah, you tell us what you did with the family last night and how, ah, all their actions and what time, who was at the house when you left.

ACQUIN: Yeah, what time? [9/11/78 Tr., Hamila, p. 18]

BLAIS: There may be a problem with identification as to who was in the house because of the...burning you know. So we'd like a statement from you as to the facts and circumstances.

(Inaudible)

BLAIS: No not completely it's (inaudible), we don't know how bad the bodies are maybe some are worse than others I don't know.

ACQUIN: (Inaudible) suffer (inaudible). [Id. p. 19]
BLAIS: No, they didn't tell me.
UM: (Inaudible)
BLAIS: Yeah.

(Inaudible)

BLAIS: Now what we should do is, um, is to talk over the whole thing first and then, ah, it'll be like a statement from you to the best of your knowledge as to who they were and what occurred, alright? George, you want to take a statement because I'm gonna leave as soon as the replacement....
HAMILA: (Inaudible) Well how many, like down here?
BLAIS: (Inaudible)
HAMILA: You don't know who they're sending up?
BLAIS: No. They didn't tell me.
HAMILA: (Inaudible)
BLAIS: I have no idea.
HAMILA: Who did you talk to?
BLAIS: Lt. Shay. Um, ... statement paper here.
ACQUIN: Well I'm not sure....
BLAIS: Well, let's start from the beginning, um, as everything you can tell us. Did you work yesterday?
ACQUIN: No.
BLAIS: ... find some statement paper.

(Telephone rings.) [Id. p. 21]

BLAIS: I can't find any statement paper.
ACQUIN: (Inaudible)
BLAIS: Pardon?
ACQUIN: (Inaudible) Do you know where... is?
BLAIS: No, he left.

BLAIS: Okay, just wnat to get you out of here as soon as possible so we'll start. Do you realize that any time you talk to anybody you have to read them their rights. Just you know, I'm sure you've been through this before, we just have to read you the rights, alright? The Constitution requires that I inform you of your rights. You have the right to remain silent. If you talk to any police officer anything you say can, will be used against you in court. You have a right to consult with a lawyer before you are questioned and may have him with you during questioning. If you cannot afford a lawyer one will be appointed... questioning. If you wish to answer questions you have the right to stop answering at any time. You may stop answering questions at any time you wish to talk to a lawyer and may have him with you during any further questioning. What's the date today, the 22nd?

HAMILA: 7-22-77, 1045.

BLAIS: Just want to put your initials on this please.

ACQUIN: What's all this...?

BLAIS: It's just acknowledging that I read those rights to you.

ACQUIN: It says you are going to take me to court. [Id. p. 22]

BLAIS: No, no, no, no. I'm not taking this into court. It doesn't say that, I didn't say that to you.

ACQUIN: It says here that anything I say can be used against me. [Id. p. 23]

BLAIS: No, ... See we have to tell this. We don't know what you're gonna tell us. See we have to tell, we have to advise you of your Constitutional rights.
ACQUIN: For what? [Id. p. 23]
BLAIS: Because of the importance..., no.
ACQUIN: (Inaudible)
BLAIS: Because we're interviewing you. We're just interviewing you. See, I won't be talking to anybody. We have to advise you of your rights. [Id. pp. 24-25]
ACQUIN: (Inaudible)
BLAIS: You've never been advised of your rights before?
ACQUIN: Only when I was arrested. [Id. p. 25]
BLAIS: You're not arrested.
HAMILA: (Inaudible)
ACQUIN: (Inaudible)
BLAIS: Lt. Shay told me to talk to him and find out if he can shed any light on, help us by telling us what happened yesterday. Tell us about the family. Anybody that disliked them or anything. What might have caused the fire?
ACQUIN: (Inaudible)
BLAIS: You don't want to sign it?
ACQUIN: No, I don't want to sign it. [Id. p. 26]
BLAIS: Alright.
ACQUIN: (Inaudible)
BLAIS: (Inaudible) I'm being very honest with you. That's why I'm advising you of your rights. (Inaudible)
ACQUIN: (Inaudible) It sounds to me like I'm being arrested. [Id. p. 27]
BLAIS: No, we're not arresting you.
ACQUIN: (Inaudible)

ZDANOWICZ: You were jumped from the rear, right?
ACQUIN: (Inaudible)
ZDANOWICZ: What happened?
ACQUIN: (Inaudible) Choke hold...I got out of it....Kicked in the side.... [Id. pp. 26-27]
ZDANOWICZ: Okay, ah, about that time somebody kicked you in the side, right?
ACQUIN: (Inaudible) The other side of the gas station. (Inaudible)
ZDANOWICZ: Okay, now you've already told us that, Lorne. You got out of the hold and at that time somebody kicked me in the side and I went down, right? Did you hit the pavement, did you hit the dirt...?
ACQUIN: I hit the ground....
ZDANOWICZ: Where are you hurt? [Id. p. 27]
ACQUIN: (Inaudible)
ZDANOWICZ: Your right arm?
ACQUIN: (Inaudible)
ZDANOWICZ: What's that mark inside? No, no, inside your arm looks like black and blue.
ACQUIN: (Inaudible)
ZDANOWICZ: How did you get the bruises all over your eye?
ACQUIN: This one here?
ZDANOWICZ: Yeah.
ACQUIN: I got it..., (inaudible).
ZDANOWICZ: Yeah, but those over your right eye and your eye lid actually, would you call it an eye lid or an eyebrow?
ACQUIN: Eye lid....
ZDANOWICZ: You said you got some on the other side...?

ACQUIN: (Inaudible)
ZDANOWICZ: Okay, what did you lose in the place?
ACQUIN: Wallet.
ZDANOWICZ: What else?
ACQUIN: I'm pretty sure the registration to the car. I'm not sure. I looked for it, I couldn't find it. [Id. p. 28]
ZDANOWICZ: Well before I do that, were you hurt at all other than that, did you get a bruise on your other side? [Ibid.]
ACQUIN: No.
ZDANOWICZ: Can I see?

(Inaudible)

ZDANOWICZ: Stand up. (Inaudible) Busted rib and never know it.... [Id. p. 29]
ACQUIN: No.
ZDANOWICZ: Let's take a look. Over here. Yeah, turn around.

(Inaudible)

ZDANOWICZ: You sure you're alright?
ACQUIN: Oh yeah.
ZDANOWICZ: There's no shortness of breath? No pain in your side?
ZDANOWICZ: Did you report this to the police?
ACQUIN: No.
ZDANOWICZ: Why not? Did you tell anybody about it?
ACQUIN: I told my old lady. [Id. pp. 29-30]
ZDANOWICZ: What time?
ACQUIN: (Inaudible)
ZDANOWICZ: Did she say to tell the police?
ACQUIN: I told her to ... got to work .... (inaudible) [Id. pp. 29-30]

ZDANOWICZ: And what time was that?
ACQUIN: ... go to work at six o'clock. Quarter after six. [Id. pp. 31-32] (Inaudible)
ZDANOWICZ: So on the way to the diner you told her to notify the police?
ACQUIN: Before then I told her (inaudible)
ZDANOWICZ: Are these the clothes you were wearing when you were (inaudible)?
ACQUIN: (Inaudible)
ZDANOWICZ: What were you wearing when you were assaulted?
ACQUIN: I had my good jeans on and, um, white T-shirt (inaudible) [Id. p. 33]
ZDANOWICZ: That's an easy mark with a white T-shirt....
ACQUIN: (Inaudible)
ZDANOWICZ: White T-shirt....
ACQUIN: (Inaudible)
ZDANOWICZ: (Inaudible)
ACQUIN: (Inaudible)
ZDANOWICZ: Okay, you were wearing a white T-shirt, what kind of pants?
ACQUIN: They're like these but they're a little more dressier. They've got patches on them.
ZDANOWICZ: Were they...? I mean...?
ACQUIN: No, (Inaudible).
ZDANOWICZ: What were you wearing for footwear?
ACQUIN: My brother's army boots.
ZDANOWICZ: Steve's?
ACQUIN: No, Pat's.
ZDANOWICZ: What were you wearing them for on a hot day like that? [Id. pp. 34-35]
ACQUIN: (Inaudible)

ZDANOWICZ: That's it -- no sweater, no belt, no...?
ACQUIN: The belt I had....
ZDANOWICZ: Where is the belt now?
ACQUIN: (Inaudible)
ZDANOWICZ: Okay, here...were you wearing socks by the way?
ACQUIN: (Inaudible)
ZDANOWICZ: Did you change socks?
ACQUIN: No, they didn't smell. [Id. pp. 35-36]
ZDANOWICZ: Okay, ... don't you sweat?
ACQUIN: (Inaudible)
ZDANOWICZ: Okay, the kid that ripped you off, how many were there.
ACQUIN: I'd say about three. [Id. p. 36]
ZDANOWICZ: Three?
ACQUIN: I seen about three. Maybe one I know. (Inaudible)
ZDANOWICZ: Okay, you may...right?
ACQUIN: (Inaudible)

(Inaudible)

ZDANOWICZ: How come you know? (Inaudible)
ACQUIN: (Inaudible)
ZDANOWICZ: Did you chase them or were you hurt?
ACQUIN: By the time I got up, they were gone. [Id. p. 37]
ZDANOWICZ: Oh. (Inaudible)
ACQUIN: (inaudible)
ZDANOWICZ: I can't see anybody ripping you off, Chief, believe me. [Id. p. 37]
ACQUIN: (Inaudible)
ZDANOWICZ: What's that?
ACQUIN: (Inaudible)

(Inaudible)

ZDANOWICZ: What time did you get home, Lorne?
ACQUIN: (Inaudible)
ZDANOWICZ: One-thirty, two o'clock?
ACQUIN: About that....
ZDANOWICZ: Your brother Steve and Joyce were in the house at the time? [Id. pp. 37-38]
ACQUIN: Not Steve...another guy Steve.
ZDANOWICZ: And what's his last name?
ACQUIN: (Inaudible) He's with, with Anna down at whatchacallit.
ZDANOWICZ: Is what?
ACQUIN: With Anna down at Mickey's.
ZDANOWICZ: Yeah. (Inaudible)
ACQUIN: He asked me if he could stay over; I said sure.
ZDANOWICZ: (inaudible)
ACQUIN: (Inaudible)
ZDANOWICZ: (Inaudible)
ACQUIN: Well we dropped Steve off (inaudible).
ZDANOWICZ: (Inaudible)
ACQUIN: (Inaudible)
ZDANOWICZ: Well where do you meet your boss?
ACQUIN: ...right up from Bill's Cafe, the diner right there...the package store there,.... [Id. pp. 38-39]
ZDANOWICZ: You can't read, can you, Chief? [Id. p. 39]
ACQUIN: A little.
HAMILA: You don't want to read all that.
ZDANOWICZ: Well I read fast, I read slow, I read good (inaudible). We'll go right through it so you'll understand, alright? I don't want to make any mistakes...if I make a mistake or error in

this statement...alright? (Inaudible)...or delete it or add to it...I want you....[Id. p. 40]

ACQUIN: (Inaudible) You want me.... [Ibid.]

ZDANOWICZ: What?

ACQUIN: (Inaudible)

ZDANOWICZ: (Inaudible) Those are your rights. This is.... [Ibid.]

ACQUIN: (Inaudible)

ZDANOWICZ: Well it's a usual police procedure that when we take to somebody during the course of an investigation it is their routine practice by the policeman to inform people of their Constitutional Rights...answering questions, giving statements, you could have an attorney, you're familiar...?

ACQUIN: I ain't signing it. [Id. p. 41]

ZDANOWICZ: Well I'm not gonna make you sign it if that's what you think....[Id. p. 42]

ACQUIN: (Inaudible)

ZDANOWICZ: Now this is strictly on your own volition.

ACQUIN: (Inaudible)

ZDANOWICZ: Alright? Want to read this all over again?

ACQUIN: (Inaudible)

ZDANOWICZ: (Inaudible)

ACQUIN: (Inaudible)

ZDANOWICZ: They were read to you?

ACQUIN: (Inaudible)

ZDANOWICZ: They were read to you?

ACQUIN: (Inaudible)

ZDANOWICZ: And you don't want to sign it now, do you?

ACQUIN: No, because I don't agree with what it says. I don't like what it says.

ZDANOWICZ: What does it say?

ACQUIN: It says, anything I say can be used against me in a court of law. What are you going to court for?

ZDANOWICZ: No..., well are you familiar with the system at all, the judicial system which you must be because you've been there so many times?

ACQUIN: (Inaudible)

ZDANOWICZ: You've been there when they arraign you and the judge arraigns.... [Id. p. 42]

ACQUIN: Yes, ...

ZDANOWICZ: Yeah, well the courts also... talk to people they always... have to read people their rights in a situation. That they could add information or be accused of or whatever the situation may be. So b law we are required to inform a subject of his rights and this is what we're doing. In other words for them, they say they sat here and chatted with you and they warned you of your rights and they gave you this blue card which has all your rights. If you wish to sign it you can but don't if you don't have to. And they do prepare you of your rights because they have to by law. (Inaudible) I'm not giving any...statement today, I want you to fully understand what

the situation is.

ACQUIN: I understand.

ZDANOWICZ: You understand?

ACQUIN: I understand.

ZDANOWICZ: And you...?

ACQUIN: (Inaudible)

ZDANOWICZ: Okay, that's your prerogative and I'm not going to try to change it.

ACQUIN: Right.

ZDANOWICZ: Okay, so I Lorne Acquin, age 27 of 4 Glenwood Street, Waterbury, Connecticut, make the following truthful statement without fear, threat or promise....

ACQUIN: (Inaudible)

ZDANOWICZ: What?

ACQUIN: Glenridge.

ZDANOWICZ: Glenridge. Knowing that it can be used against me, (inaudible) right?

ACQUIN: (Inaudible)

HAMILA: You want that out?

ZDANOWICZ: Yeah, you want me to cross that out?

ACQUIN: (Inaudible)

ZDANOWICZ: This is a preamble....

(At this point the tape ended.)